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No. ___ OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

GIL N. MILEIKOWSKY, M.D.,
Petitioner,

v.

TENET HEALTHSYSTEM *ET AL.*,
Respondents.

On Petition for a Writ of Certiorari to the Court of Appeal of California, Second Appellate District, Division Four

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether California Bus. & Prof. Code § 809.3(c), which denies a physician's right to be heard by counsel in a retaliatory suspension hearing even though such right is provided in federal law, 42 U.S.C. § 11112(b)(3)(C), violates the Due Process Clause when the California statute is applied to authorize termination of such hearing based on self-representation.

2. Whether California can continue to maintain "opt out" status under the Health Care Quality Improvement Act of 1986 (HCQIA), 42 U.S.C. §§ 11101-52, after Congress removed the opt-out provision.

PARTIES TO THE PROCEEDING BELOW

Petitioner Gil N. Mileikowsky, M.D., was plaintiff-appellant in the proceeding below. Respondents Tenet Healthsystem, Encino-Tarzana Regional Medical Center, a California Corporation, and Does 1 through 100 inclusive, were defendant-respondents in the proceeding below.

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PETITION FOR A WRIT OF CERTIORARI

Gil N. Mileikowsky, M.D., respectfully petitions this Court to issue a writ of certiorari to the Court of Appeal of California, Second Appellate District, Division Four, to review its judgment affirming the termination of a hospital privileges hearing at which he was denied counsel.

OPINIONS BELOW

The Court of Appeal of California, Second Appellate District, held against Petitioner in a published decision, *Mileikowsky v. Tenet Healthsystem et al.*, 128 Cal. App. 4th 531 (2nd App. Dist. 2005) (App., *infra*, 3a-47a). Petitioner's petition for rehearing was denied (*id.* 2a). The Court of Appeal affirmed an unpublished decision against Petitioner by Judge Yaffe of the Superior Court of California, County of

Los Angeles (*id.* 48a-50a). Petitioner's motion for a new trial by the Superior Court was denied (*id.* 51a-52a). The Supreme Court of California ultimately denied his Petition for Review on August 17, 2005, noting that Justice Kennard voted to grant the petition (*id.* 1a).

Encino-Tarzana Regional Medical Center rendered unpublished opinions that underlie this litigation. Its Appellate Review Body rendered an Order and Findings dated July 25, 2002 against Petitioner (*id.* 53a-61a), which affirmed the hearing officer's March 30, 2002 ruling terminating the hearing (*id.* 62a-76a).

JURISDICTION

The order of the Supreme Court of California was entered on August 17, 2005 and this Petition for a Writ of Certiorari was timely filed by November 15, 2005. This Court has jurisdiction under 28 U.S.C. §1257(a). 28 U.S.C. §2403(b) may apply with respect to Cal. Bus. & Prof. Code § 809.3(c), and the Attorney General of California is being duly served.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution provides in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. CONST., AMEND. XIV.

Federal law provides in relevant part, "A health care entity is deemed to have met the adequate notice and hearing requirement . . . with respect to a physician [undergoing professional review body disciplinary proceedings] if the following conditions are met (or are waived voluntarily by the physician):

> (3) Conduct of hearing and notice. If a hearing is requested on a timely basis under paragraph (1)(b)—. . .